Update - Volume 17, Number 7, 2004

Emergency Medical Professionals: Assisting In Identifying and Documenting Child Abuse and Neglect

By Laura L. Rogers1

Emergency medical technicians (EMTs) respond to a home where an 8-month-old infant is unconscious and barely breathing. Both parents are present. The EMT immediately asks, “What happened?” The father anxiously replies, “She rolled off the couch and hit her head on the coffee table.” As the EMT intubates and prepares to transport the child to the hospital, he hears the mother tearfully scolding her husband for shaking their child. The father apologizes. The EMT makes a mental note there is no coffee table present. At the hospital, the mother is silent as the father tells the doctor that he accidentally dropped the child as he was walking downstairs. “She tumbled a few stairs.” The child has a massive subdural hematoma and bilateral retinal hemorrhages. She dies. Manner of Death: Homicide. Cause of Death: Shaking.

Whom does the prosecutor charge for this murder? How does the prosecutor prove the father inflicted the injury? What evidence establishes this was not an accidental fall down the stairs? What can EMTs do to assist in the preservation and presentation of evidence?

Because emergency calls involving children often do not mandate a tandem response by police, EMTs may be the only responders to a

potential crime scene. Police notification and response may occur hours after the EMTs leave. Meanwhile, vital evidence may be wiped, washed or thrown away. While recognizing that EMTs are under intense pressure at an emergency scene and may be hard-pressed to accomplish tasks beyond their primary goal of direct patient care, they are in a unique position to evaluate, listen, observe, document, or collect items of evidentiary importance that would otherwise be lost. In child abuse or neglect cases, this information may assist in determining the mechanism of injury and/or identification of the abuser. Complete and accurate collection of information and timely documentation is crucial. This article will outline ten fundamental items that EMTs ideally should note, document and/or collect when responding to a “child in need of assistance” call.

1. **Document all adults and children present.** Include name, birth date and address.

2. **Document all statements and the demeanor of all persons present.** EMTs are privy to statements made by offenders, supportive and non-supportive caretakers, and victims. If not immediately memorialized, these statements may be forgotten, misconstrued, or denied. There exists a myriad of hearsay2 exceptions3 that allow prosecutors to present various qualifying statements in court. Statements that are emotionally motivated, based on personal observations, made to medical personnel, or that represent current thinking or feelings are typically admissible. As curators of “scene” statements, EMTs must be familiar with the general requirements that allow certain statements to be used in court.

    a. Identify and document the maker of the statement.

    b. Record all statements in the official report:

"Documentation reinforces memory, provides a vehicle for conveying information to others, and increases the accuracy of testimony."4 The EMT will respond to many emergency calls between the pertinent event and the court date. Unless documented, details will diminish and accuracy will suffer. Testimony based solely on memory may be ruled inadmissible due to unreliability, while the same testimony may be ruled admissible if it is supported by a report written at or near the time of the event. Always use clear, objective language and avoid opinions and judgments when documenting information.

c. Record verbatim content: Many a courtroom battle has been fought over the precise wording and interpretation of a past statement. Paraphrased statements may be ruled inadmissible as content is arguably misconstrued. To determine admissibility, courts examine statements for details of appearance, smell, taste or texture, e.g., "White sticky stuff came out of his peepee"; age-appropriate language, e.g., "His hot dog touched my butt"; and verb tense, e.g., "My arm hurts," versus "My arm hurt." Often, the child's original statement contains emotion or unique word choices that are more persuasive to a jury than formal testimony. As one

former prosecutor has noted, “[e]xpressions such as these can be powerful evidence in convincing a jury the child actually experienced abuse.”5 In cases of physical abuse or neglect, the responsible person may initially provide a history of trivial accident or injury before realizing the gravity of harm inflicted.6 At the hospital, when the severity of injury becomes known, the once trivial history will amplify when told to the doctor or hospital social worker. Precisely documented statements are invaluable in court.

d. Document the time when the statement was made: EMTs routinely document the time an injury occurred. Note and document the specific time statements are made. Be specific: do not guesstimate, e.g., “Three minutes after arrival, mother stated…” and do not generalize, e.g., “While at the home the child reported….” To be admissible in court, statements made simultaneously7 with or while experiencing the stress8 of an event may be considered reliable. Failure to note when a statement was made can prevent its use in court.

e. Record the speaker’s demeanor: A speaker’s emotional state9 at the time the statement was made is vitally important. Record specific physical expressions, behaviors,

body postures, gestures, or speech patterns. Do not synopsize, e.g., “She looked scared when….” but rather describe, e.g., “She was crying, shaking and kneeling in the corner when she stated…” If the speaker appeared intimidated by another person present, note this, e.g., “She looked at her frowning mother before shrugging her shoulders.”

f. Explain your job: Statements made to medical professionals are typically admissible in court if the speaker understands the statement will be considered when medical assistance10 is dispensed. Very young children may not understand the role of a doctor or paramedic. A quick explanation will dispel confusion e.g., “I’m a paramedic. My job is to check your body to make sure you are not hurt. Your job is to tell me if anything hurts.”

g. Ask probing follow-up questions: Get the details! Ascertain the alleged timing and mechanism of injury, onset of and specific symptoms. Ask basic assessment questions of who, what, where, when, and how, when dealing with a suspicious call. When provided a questionable history of events, inquire further, e.g., “How many stairs did she fall down?” “Did she roll, slide or ‘fly’ down the stairs?” “Who was present?” “What happened

immediately before she was injured?" "When and what did she last eat?" Establish if the speaker witnessed the event or is repeating what someone else told him or her. Structure questions to ensure accurate information, e.g., "What did you see happen?" not, "What happened?"

h. Record the question: The content of an answer can often be understood only by knowing the question. Record verbatim questions in the report. Document if statements are unsolicited or spontaneous, i.e. "He spontaneously stated, 'those are old bruises.'"

i. List all persons present who heard the statement: To assist law enforcement during an investigation, include names of other EMTs, law enforcement or private citizens who heard the statements.

3. **Document the environment:** Culpable caretakers commonly clean up, modify and destroy evidence before police arrive. EMTs may arrive prior to or during the destruction. To ensure an accurate scene description, EMTs should focus all of their senses on their surroundings. Important items to note include pieces and placement of furniture and condition of the home. Remember, statements made by culpable caretakers often contradict evidence found or the mechanism of injury described. For example, an EMTs report from a scene without law enforcement present may read, "'Baby-sitter states child rolled off couch, hit his head on coffee table leg, unconscious, called 911 immediately.'

No coffee table seen in home. Sputum-soaked paper towels on kitchen floor, blood on kitchen counter. Child nonresponsive, felt cold."

4. **Collect significant items:** Preserving the potential mechanism of injury is vital to verifying a suspect history. For example, when responding to a SIDS call for a 16-month-old female, inquire where the child was sleeping when she died. Look for blood on surrounding pillows, towels or other items possibly used for suffocation. Collect the item she was sleeping on (bedding, couch section or blanket). Other important items to collect include all identified mechanisms of injury, child's clothing, diaper worn upon arrival, and any bloody items. If any dangerous weapons or illegal substances are visible, immediately call for police assistance.

5. **Identify and record the child's age and developmental stage:** Commanding a comprehensive understanding of the stages of child development allows an EMT to determine the accuracy of the history provided. Initially inquire about the mechanism of injury, and then establish the child's developmental level. Weigh these statements to determine if the child is capable of performing the act alleged by the caretaker, e.g., the one-month-old rolled off the couch, or the child with severe cerebral palsy climbed up and jumped off a dresser. Consider and document the reasonableness of the history against developmental abilities.

6. **Know the signs of abuse and neglect:** EMT training customarily focuses only on severe physical abuse. Consequently, experienced EMTs may have difficulty recognizing and assessing less extreme cases of child abuse, neglect or children at risk. To avoid misdiagnoses, EMTs must also

be aware of certain cultural issues and practices including Mongolian Spots, cupping and coining. If abuse is suspected, note and document the following:

a. Signs of physical abuse: Unexplained broken bones, bruises, black eyes, cuts, burns, and welts; pattern injuries and bite marks; anti-social behavior; fear of adults or of being at home; signs of apathy, depression, hostility or stress; eating disorders; lack of concentration or reports of injury received from an adult caretaker.

b. Signs of sexual abuse: Difficulty walking or sitting, over-compliance, excessive aggressiveness, nightmares, bed-wetting, a drastic change in appetite, inappropriate interest or knowledge of sexual acts, or fear of a particular person.

c. Signs of neglect: Unsuitable clothing for the weather; unbathed / dirty; severe body odor; back of head flat; severe diaper rash; hungry; underweight; lack of food, formula or toys; parent or child use of drugs or alcohol; poor school attendance, apparent lack of supervision; unsuitable living conditions, including dangerous surroundings (e. g., presence of drugs, alcohol, or exposed electrical wires).

7. **Assess children present at unrelated calls:** At every concerning scene11 where a child is present, and especially at domestic violence scenes,

an assessment for child abuse and neglect should be completed. Unless immediate care is necessary, the assessment need not disrupt patient care and documentation can be completed later.

8. **Evaluate children and adults with disabilities:** Abuse and neglect of this population is dramatically high and rarely reported. Any opportunity for medical assessment should be exploited as medical needs may go unchecked. Verify and document diagnosed disability, mental and physical functioning levels, routine medical concerns and signs of abuse or neglect as referenced above.

9. **Adhere to mandatory reporting requirements and procedures:** An EMTs status as a mandated reporter is regulated by state law.12 Regardless, EMTs must understand the local child protection system and know how to activate it on the child's behalf. If abuse is suspected, contact child protective services (or adult protective services, where appropriate).

10. **Interact with the multidisciplinary team (MDT):** Combating child abuse necessitates sharing information and resources. Many state laws establish who is authorized to be a MDT member and allow members to share confidential records and information. If authorized, EMTs should fully participate in the MDT by attending meetings and discussing cases with team members.

Child abuse and neglect cases are wrought with difficult issues. Holding abusers responsible for their acts requires meticulous documentation, even-handed investigations and teamwork. EMTs are uniquely positioned to observe and document vital information when assessing the possibility of child abuse.

1 Laura L. Rogers is a senior attorney at the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse located in Alexandria, Virginia.
2 Hearsay is a statement, other than one made by the declarant while testifying at the current court proceeding, offered in evidence to prove the truth of the matter asserted." Fed. R. Evid 801(c).
3 Present Sense Impression, FRE803(1), Excited Utterance, FRE #803(2), Then Existing Mental, Emotional, or Physical Condition, FRE 803(3), Statements for Purposes of Medical Diagnosis or Treatment, FRE 803(4).
4 Prehospital Providers on Child Abuse, Neglect Recognition and Mandatory Reporting Curriculum, Pediatric Emergency Care Vol. 18, No. 3 June 2002.
5 Victor I. Vieth, When Cameras Roll: The Danger of Videotaping Child Abuse Victims Before the Legal System is Competent to Assess Children's Statements, 7(4) Journal of Child Sexual Abuse 113, 120 (1999).
6 One study has noted that 95% of initial histories supplied by caretakers of the cause of the abuse and the child's injuries were subsequently found to be false. See Smith, Wilber L., Abusive Head Injury, 7 APSAC Advisor 16 (1994).
7 Fed. R. Evid. 803(1).
8 Fed. R. Evid 803(2).
9 Fed. R. Evid. 803(3).
10 Fed. R. Evid. 803(4).
11 Includes narcotics or alcohol use, drug labs, gang or family violence, weapons use, etc.
12 See http://www.ndaa-apri.org/publications/newsletters/update_volume_17_number_7_2004.html# (National Clearinghouse on Child Abuse and Neglect Information) for specific state statute information.

American Prosecutors Research Institute
99 Canal Center Plaza, Suite 510,
Alexandria, VA 22314